
(2009) 01 RAJ CK 0042
In the Rajasthan High Court

Commissioner of Income Tax

APPELLANT

Vs

Suresh Marbles (P) Ltd.

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Income Tax Act, 1961 — Section 143, 145, 260A

Citation : (2009) 01 RAJ CK 0042

Hon'ble Judges : Sangeet Lodha, J;A.M. Kapadia, J

Bench : Division Bench

Judgement

1. This appeal u/s 260A of the Income Tax Act, 1961 (for short the Act of 1961 hereinafter) is directed against order dated 5-2005 passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur (for short the Tribunal hereinafter) in ITA No. 554/Jd/1999 and ITA No. 531/Jd/1999 for the assessment year 1996-97, whereby the aforesaid appeals preferred have been partly allowed and the order dated 26-8-1999 passed by the Commissioner, of the Income Tax (Appeals) (in short the Commissioner (Appeals) hereinafter), reducing the estimated sales, has been confirmed and the GP rate determined by the Commissioner (Appeals) as 25 per cent has been enhanced to 25.95 per cent.

2. The relevant facts in nutshell are that the respondent assessee is engaged in manufacturing of marbles slabs out of the purchased marble blocks. During the relevant assessment year, it declared total sales of Rs. 50,87,055 and job charges of Rs. 2,27,873, The return filed by the assessee was processed by the assessing officer (in short the assessing officer hereinafter) u/s 143(1)(a) of the Act of 1961. The assessing officer found that the purchase bills of marble blocks show that no weight or measurement of the marble blocks is recorded on the purchase bills. That apart, the assessing officer found that no stock register of marble blocks was maintained by the assessee. In this view of the matter, while rejecting the books of account, on the facts and in the circumstances of the case, the assessing officer estimated the sales of the assessee at 1.5 times the declared sales etc. and considering the comparable case of Anil Marbles (P) Ltd.

determined the GP rate as 34.42 per cent. Accordingly, the total sales were estimated at Rs. 84,04,005, which resulted in increase in GP by Rs. 15,79,845.

3. Aggrieved by the aforesaid order dated 25th March, 1999 passed by the assessing officer, the assessee preferred an appeal before the CITEA). After due consideration, the Commissioner (Appeals) upheld the rejection of the books of account by the assessing officer u/s 145(1) of the Act of 1961, however, the learned Commissioner (Appeals) found the estimated sales so also the GP rate determined by the assessing officer on the higher side. The Commissioner (Appeals) observed that while determining the estimated sales, the assessing officer has not considered the relevant aspects namely investments, locality, year of establishment of business, manpower utilized, availability of raw material etc. After considering the facts and circumstances of the case, the Commissioner (Appeals) opined that there is a general feature of under billing in the line of business wherein the assessee is engaged and such feature cannot be ruled out in the case of the assessee as well. Accordingly, the Commissioner (Appeals) while determining the estimated sales at Rs. 55,00,000 including all receipts held that it will be reasonable to apply GP rate of 25 per cent on estimated sales.

4. Aggrieved by the aforesaid order passed by the learned Commissioner (Appeals), revenue as well as the respondent assessee preferred appeals. The cross-objections were filed by the respondent assessee in the appeal filed by the revenue. By the order impugned, the learned Tribunal has upheld the order passed by the Commissioner (Appeals) restricting the enhanced sales to Rs. 55,00,000, however, in view of the fact that the assessee had declared GP rate of 25.95 per cent in the assessment year 1995-96, the learned Tribunal held that the same GP rate should be applied to the assessment year in question as well.

5. The appeal preferred by the revenue was admitted by this Court on the following substantial question of law:

Whether on the facts and in the circumstances and in law the learned Tribunal was justified in confirming the finding of learned Commissioner (Appeals) ignoring the fact and finding given by the assessing officer that purchase bill of .marble blocks showed no weight or measurement and no stock register was maintained and by considering the comparable case of Anil Marbles (P) Ltd., the GP rate 32.12 per cent taken and addition of Rs. 15,79,845 ?

6. It is submitted by the learned Counsel for the revenue that the comparable case of M/s Anil Marbles (P) Ltd. referred by the assessing officer is an identical case of similar nature and provides a sound basis for estimation of sales as well as GP in the case of assessee, therefore, the Commissioner (Appeals) so also the Tribunal have erred in distinguishing the comparable case from the assessee's case. Accordingly, it is submitted by the learned Counsel that the orders impugned passed by the Tribunal so also by the Commissioner (Appeals) are liable to be set aside and the order passed by the assessing officer deserves to be restored.

7. Per contra, the learned Counsel appearing on behalf of the respondent assessee, while relying upon the judgment of this Court in the matter of Commissioner of Income Tax Vs. AKJ Granites (P) Ltd., , submitted that the best judgment assessment itself is based on estimate and cannot be scaled at exactitude, therefore, on the facts and in the circumstances of the case, no substantial question of law arises in the matter and the order passed by the learned Tribunal confirming the order passed by the Commissioner (Appeals) with the modification in regard to the GP rate to be applied, does not warrant interference by this Court.

8. We have considered the rival submissions and perused the impugned order and other material available on record.

9. It is not the law that books of account of assessee having been rejected as unreliable u/s 145(3) of the Act of 1961, the sales returned by the assessee must necessarily be rejected and such sales should be estimated at higher figure than returned by the assessee. Even after, the rejection of the books of account the assessing officer is under obligation to determine as to whether the sales as returned by the assessee should be accepted or higher sales should be estimated. The estimated sales must be determined fairly on the basis of relevant material on record. As noticed by the learned Commissioner (Appeals), in the instant case, while determining the estimated sales the assessing officer had not considered the relevant aspects. We are of the considered opinion, on the facts and in the circumstances of the case, the estimated sales determined by the Commissioner (Appeals) appear to be just and reasonable.

10. Coming to the GP rate, it is to be noticed that as in the case of AKJ Granites (P) Ltd. (supra), the Commissioner (Appeals) has found that the case of M/s Anil Marbles was not comparable case for the purpose of lifting the GP rate to be applied to the case of the assessee inasmuch as while adopting the said GP rate, the assessing officer has not considered the investments, locality, year of establishment of business, manpower utilized, availability of raw material etc. of both the cases. The learned Tribunal while determining the GP rate as 25.95 per cent has taken into consideration the GP rate declared by the assessee during the assessment year 1995-96, which undoubtedly is relevant consideration. Moreover, as laid down by this Court in AKJ Granites (P) Ltd. (supra), the best judgment itself is based on estimate and cannot be scaled at exactitude. Thus, for the parity of the reasons on the facts and in the circumstances of the case, in our considered opinion, the GP rate adopted by the learned Tribunal as aforesaid also cannot be faulted with.

11. For the aforementioned reasons, we answer the substantial question framed by this Court as aforesaid in favour of the assessee and against the revenue,

12. In the result, the appeal fails, it is hereby dismissed. No order as to costs.